



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard: Opinion No. 0-5367
 Re: Appropriation from the
 Permanent School Fund -
 validity.

We quote your letter of June 4, 1943:

"I am enclosing photostatic copy of House Bill No. 514, Acts of the Regular Session of the Forty-eighth Legislature, appropriating \$452.60 from the Permanent School Fund for the purpose of reimbursing D. B. Eades, of Dallas, Texas, for funds paid by him as bonus and rental upon certain vacancies in public school lands.

"Since this appropriation is made from the Permanent School Fund, I respectfully request your opinion as to whether the appropriation is valid."

The nature of House Bill No. 514 is described in the caption thereto, said caption reading as follows:

"AN ACT making an appropriation of Four Hundred and Fifty-two Dollars and Sixty Cents, (\$452.60) from the Permanent School Fund for the purpose of reimbursing D. B. Eades of Dallas, Texas, for funds paid by him as bonus and rentals upon certain lands being described in State of Texas mineral leases Numbers 24090, 24091 and 24092; said lands having been claimed to be the property of the State of Texas and part of the public school lands, but by the terms of a final judgment of the District Court of Travis County, Texas, said lands were adjudged to be not the

property of the State of Texas; therefore, the sums paid as rentals and bonuses on said lands were improperly received; said Act further providing that the Comptroller of the State of Texas be directed to issue warrant to reimburse the party named herein in the amount specified herein; and declaring an emergency."

The body of the bill contains the following appropriation:

"To pay D. B. Eades of Dallas County, Texas, the sum of Four Hundred and Fifty-two Dollars and Sixty Cents (\$452.60) as reimbursement for rentals and bonuses paid by him into the Permanent School Fund on State Mineral Leases Nos. 24090, 24091, and 24092 of lands located in Duval County, Texas, which said lands were not the property of the State of Texas and the leases were for that reason void and of no effect; the State Permanent School Fund not being entitled to receive or retain said money . . . \$452.60."

As is apparent from the portions of the bill quoted above, the act does not purport to appropriate moneys rightfully belonging in the Permanent School Fund, to uses and purposes other than those to which the fund is dedicated by constitutional provision; but the purpose of the appropriation is to require the Permanent School Fund to account for moneys not rightfully belonging to it which in equity and good conscience it cannot retain. Such an appropriation, in our opinion, does not violate the terms of Article 8, Section 7, of the Constitution, prohibiting the diversion of special funds. You are therefore advised that such an appropriation from the Permanent School Fund is valid.

Similar appropriations have heretofore been approved by this department:

See the opinions listed in the following volumes of the letter opinions of this department --Volume 377, page 980, page 939; Volume 371, page 594, page 711; Volume 367, page 38.

Yours very truly

RWF:JP:bt

APPROVED June 11, 1943

Gerald C. Mann

Attorney General of Texas

ATTORNEY GENERAL OF TEXAS

By s/ R.W. Fairchild
Assistant

APPROVED OPINION COMMITTEE By BWB,Chr.